

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the Family Child Care License of Mary Fiola **ORDER ON LICENSEE'S
MOTION FOR SUMMARY DISPOSITION**

The captioned matter was originally scheduled for hearing on October 18, 2011. It has been continued three times at the request of the Licensee. Hearing is scheduled to begin on February 1, 2012. On January 11, 2012, counsel for the Licensee filed a motion for summary disposition. Because of the pendency of the motion, counsel for the Department and the County requested a status conference.

On January 17, 2012, the ALJ held a telephonic status conference. Cynthia B. Janke, Assistant Attorney General (AAG), appeared on behalf of the Department of Human Services. Ben Rosene, Assistant Ramsey County Attorney, appeared on behalf of Ramsey County (the County). Adriana Shannon and Rebekah Bailey, Nicols and Kaster, appeared on behalf of Mary Fiola (the Licensee).

At the status conference, Counsel for the Licensee stated that the motion should not delay hearing. The ALJ confirmed with the parties that the matter would be heard on February 1-2, 2012 if the motion were denied. The ALJ further afforded the Department and County opportunity to respond to the summary disposition motion. The Department filed its response on January 23, 2012. The County joined in the Department's response.

Based on the filings and records herein, and the arguments of counsel,

IT IS HEREBY ORDERED:

1. The License's motion for summary disposition is **DENIED**.
2. Hearing shall proceed on February 1, 2012, as previously scheduled.

Dated: January 24, 2012

s/Linda F. Close

LINDA F. CLOSE
Administrative Law Judge

MEMORANDUM

Background

This matter is an appeal from an order of the Commissioner of Human Services revoking the childcare license of the Licensee. The revocation came about because the Department determined that the Licensee had committed maltreatment of a Vulnerable Adult (VA) at a group home for vulnerable adults with mental retardation and mental illness where the Licensee worked nights. The maltreatment determination followed an investigation into a report that the Licensee had used a bungee cord to block a VA's bedroom door so that the VA would have to stay in her room at night.¹

The Licensee worked at the group home, MDM Rubicon (MDM), at night.² During the day, the Licensee operates a daycare for children. Because of the maltreatment determination, the Licensee was disqualified from caring for anyone served by a Department program, including children in a daycare setting. After the Department found that maltreatment was substantiated, resulting in disqualification, the Licensee requested reconsideration of the maltreatment determination and the disqualification. The Department affirmed those decisions, and the Commissioner subsequently revoked the Licensee's childcare license.³ The maltreatment determination, the disqualification, and the revocation of the childcare license are all issues for hearing in this contested case.

Issues Presented On The Licensee's Motion

1. Do the undisputed facts support a conclusion that the Licensee did not "confine" the VA within the meaning of the Vulnerable Adults Act (VAA)?
2. Is the Licensee entitled to summary disposition as a matter of law?

Standard for Summary Disposition

Summary Disposition is the administrative equivalent to summary judgment.⁴ Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.⁵ A genuine issue is one which is not a sham or frivolous.⁶ A material fact is a fact the resolution of which will

¹ Licensee's Motion for Summary Disposition (Licensee Motion) Ex. K.

² MDM suspended the Licensee from her duties at the home on February 3, 2010, and the Licensee has not worked there since. Licensee Motion, Ex. E

³ *Id.*

⁴ Minn. R. 1400.5500(K).

⁵ *Sauter v. Sauter*, 244 Minn. 482, 70 N.W.2d 351, 353 (1955); *Louwagie v. Witco Chemical Corp.*, 378 N.W.2d 63, 66 (Minn. Ct. App. 1985).

⁶ *A & J Builders, Inc. v Harms*, 288 Minn. 124, 179 N.W.2d 98 (1970).

affect the result or outcome of the case.⁷ When no factual disputes are raised, the resolution of which might clarify the application of law, summary judgment is proper.⁸

In considering motions for summary disposition in administrative contested case proceedings, administrative law judges have adopted the standards developed in district court practice for considering motions for summary judgment.⁹ Like summary judgment, summary disposition is appropriate when there are no genuine issues of material fact.¹⁰

The ALJ finds that there are genuine issues of material fact such that summary disposition of this matter is not appropriate. Accordingly, hearing will proceed as scheduled.

Genuine Issues of Material Facts Preclude Summary Disposition

The VAA defines maltreatment as abuse, neglect or financial exploitation.¹¹ Maltreatment by abuse includes conduct that “produces or could reasonably be expected to produce physical pain or injury or emotional distress....” The statute includes confinement among the means by which maltreatment by abuse may occur.¹²

The Licensee argues that the confinement grounds on which the Department made its maltreatment determination cannot be proved at hearing. The Licensee reasons that the VA was able to open her door and reach her hand out to release the bungee cord, thereby freeing herself from her room. Because this was possible, the Licensee continues, no confinement, within the meaning of the VAA, occurred.

The exhibits submitted by the Licensee belie her argument. Interviews with staff at MDM indicate that the VA has limited mental functioning.¹³ In addition, extensive professional testing of the VA shows that she functions at the level of a child of three years, eight months.¹⁴ Although the VA demonstrated for staff the ability to push her door open about four inches when the bungee cord was in place, the VA never took the next step of releasing the bungee cord. On the contrary, there is evidence that the VA did not understand how to take that step. Staff notes show that the VA cannot open a locked door, which puts her at risk.¹⁵ Finally, another MDM resident recounted hearing

⁷ *Zappa v. Fahey*, 310 Minn. 555, 556, 245 N.W.2d 258, 259-60 (1976).

⁸ *Holiday Acres No. 3 v. Midwest Federal Savings & Loan Association of Minneapolis*, 308 N.W.2d 471, 480 (Minn. 1981).

⁹ See Minn. R. 1400.6600 (1997). (Unless otherwise specified, citations to Minnesota Rules refer to the 1997 edition.)

¹⁰ Minn. R. 1400.5500(K); compare Minn. R. Civ. P. 56.03; *Sauter v. Sauter*, 70 N.W.2d 351, 353 (Minn. 1955); *Theile v. Stich*, 425 N.W.2d 580, 583 (Minn. 1988).

¹¹ Minn. Stat. § 626.5572, subd. 15.

¹² Minn. Stat. § 626.5572, subd. 2 (b) (3).

¹³ Licensee's Motion, Ex. E, H.

¹⁴ Department Response to Motion for Summary Disposition (Dept. Resp.), Affidavit of Jim Janacek (Janacek Affid.), Ex. A, p. 120.

¹⁵ Janacek Affid., Ex. B, p. 109.

the VA scream and yell at night to be let out of her room.¹⁶ If the VA knew how to release the bungee cord, she did not exhibit that ability.

The Licensee also argues that because the VA could open the door by releasing the bungee cord, she could not reasonably have experienced emotional distress. This assertion again raises material facts, and these are subject to dispute. As previously mentioned, the VA screamed and yelled at night to be let out of her room. This reaction suggests that she was, indeed, distressed. In addition, when the VA demonstrated to MDM staff the use of the bungee cord, the VA again became upset.¹⁷

These facts are material, and they raise genuine issues for trial about whether the Licensee engaged in the alleged conduct and whether the conduct amounts to maltreatment. Because there are genuine issues of material fact, the Licensee's motion must be denied.

L. F. C.

¹⁶ Licensee's Motion, Affidavit of Rebekah Bailey, Ex. B p. DHS 5.

¹⁷ Janacek Affid. Ex. C, p. 156.